



Appeal Decision

Site visit made on 8 October 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 17 October 2019

Appeal Ref: APP/Y5420/X/18/3218650

84 Alexandra Road, London N8 0LJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ozcan Hassan against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2018/2922 dated 31 August 2018 was refused by notice dated 25 October 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is: use of a 5 bedsit house in multiple occupation (HMO).
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Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

The LDC application

2. The LDC was sought for '*use of a 5 bedsit house in multiple occupation (HMO)*'. The LPA changed this description and dealt with the application on the basis that it was for a use of the dwelling by 6 occupants. Their refusal notice (HGY/2018/2932) was issued on 25 October 2018. On behalf of the appellant it is argued that the LPA should not have changed the description without agreement.

3. However, the fact that this did not happen does not fundamentally affect what was applied in the first instance by the appellant. An application for an LDC, for either 5 occupants or 6 occupants is, in effect, an application for a Class C4 small HMO use (for HMO use up to 6 persons). Thus the Council's decision was to refuse the application for a Class C4 use. The definition of a Class C4 use is a house shared by 3 to 6 unrelated individuals as their main residence who share basic amenities including a kitchen and other living spaces. It is on this basis that I have dealt with the appeal and I am satisfied that no injustice has been caused.

The extant enforcement notice

4. This enforcement notice (reference HMO/2018/00429) was issued on 12 November 2018. It alleged the '*material change of use to a House in Multiple Occupation (C4)*'. Initially both the Council and the Planning Inspectorate considered that the LDC application did not comply with section 191(2)(b) of the Act. It was considered and that the use could not be lawful because it constituted a contravention of the notice in that the LDC was for the same use which had been enforced. Although an appeal was made against the enforcement notice, it was not validated and the notice came into effect on 17 December 2018.

5. However, the date of the LDC application was 31 August 2018 and this was well before the notice was issued. The wording of section 191(2)(b) is quite clear. It states that uses and operations are lawful at any time if; *(a) no enforcement action may be taken in respect of them.....' and, (b) they do not constitute a contravention of any enforcement notice then in force* (my underlining).

6. At the time of this LDC application the enforcement notice was clearly not in force. Therefore, the use as applied for was, at that time, either lawful or not, on that date (31 August 2018). Clearly the Council was of the view that the use was unlawful and refused the LDC application. This decision has now been appealed and I have must dealt with it on the basis of whether or not the Class C4 small HMO use, as applied for, was lawful or not on 31 August 2018. The submitted layout plan RE84AR/1 is dated 14 September 2018 which is two weeks after the LDC application was submitted. I have taken the plan as being the layout at that time but noted some differences in layout at the time of my site visit. See below.

Background information

7. The appeal building is a two-storey terraced dwellinghouse with a rear extension and long narrow garden. It is located on the east side of Alexandra Road in this predominantly residential area and is to the south of The Mall Wood Green Shopping Centre. It does not lie within a conservation area.

8. In its appeal statement the Council has set out the relevant planning and enforcement history. This includes a 2009 withdrawn LDC application for use of the property as five self-contained flats; a closed enforcement case relating to alleged unauthorised works in 2009/2010, as well as the notice the subject of this appeal. There is no need to repeat this in full at this stage.

Reasons

Introduction

9. An appeal relating to the refusal of a LDC application is confined to the narrow remit of reviewing a LPA's reason(s) for refusal. In this case it is necessary to consider the LPA's reasons for refusal and to decide whether or not the decision was sound. The planning merits of the case do not fall to be considered. This LDC was applied for in order to establish whether the use of the dwellinghouse as a Class C4 small HMO use was lawful for planning purposes on the date of the application, 31 August 2017. The onus is upon the appellant to demonstrate that this was the case.

10. Planning Practice Guidance (PPG) indicates that an applicant for a LDC is responsible for providing sufficient information to support an application and that, without sufficient or precise information, a LPA may be justified in refusing a LDC.

The gist of the Appellant's case

11. It is contended that the LPA decision is based on an officer assessment which has not considered the evidence submitted in support of the LDC application. It is indicated that this evidence clearly demonstrates that the change of use to a Class C4 HMO was permitted development at the time the conversion works were undertaken in 2011. It is argued that the Council's application of the 'four year rule' is not the correct approach and that it has been proven that 'at the time of conversion it was permitted development'.

12. The Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO) is referred to, whereby a permitted change of use from a Use Class 3 (dwellinghouse) to C4 HMO came into effect on 1 October 2010. Reference is also made to the Article 4 Direction (A4D) issued by the Council on 30 November 2013

which restricted permitted development from C3 to C4 use. It is contended that the A4D only came into effect after the property had been converted into a Class C4 HMO.

13. It is argued, therefore, that the application for the LDC should be considered on the basis of whether the property was converted to an HMO before 30 November 2013. It is contended that this is the case and that an LDC should be issued. In support, tenancy agreements are submitted and are considered to indicate that the property was converted from a C3 single dwellinghouse use to a C4 HMO and then used as such. At that time (2011) the planning permission was not required for such a change of use and, when the A4D came into force, the appeal property had already been in use as a C4 HMO for 2 years. It is also argued therefore that, even though a LDC application was submitted, this was not required since the property had been lawfully in Class C4 use since 2011.

14. It is argued that the Council's statement referring to the Council Tax situation; the Council's visit confirming that all rooms had kitchen units '*without*' cooking facilities; the fact that there are 5 doorbells; that there was a single family in occupation in 2009 are all factors which do not assist the Council's case. Instead they support the contention that the property was converted to a 5 person HMO in 2011 and has been in such as use since that date.

The gist of the Council's case

15. The Council stresses that the onus is upon the appellant to show that on 31 August 2014 the property was in Class C4 HMO use and that it has been continuously in that use between that date and the date of the enforcement notice. That is, for a continuous 4 year period.

16. The Council acknowledges the fact that the details of the numerous tenancy agreements between February 2011 and August 2018 have been submitted. It also refers to the fact that the Council's records show that the property has been listed for Council Tax purposes as a single dwellinghouse. The Council also refers to various site visits to the property and its planning history.

17. With reference, amongst other things, to application HGY/2008/2194, the Council indicates that, from 2002 to at least 2008, the property had been in use as 5 self-contained studio bedsit flats. The 2008 application had stated that this use had begun in 1995. In 2009 the Council were made aware of works to the property to create self-contained flats and an enforcement case was opened (UNW/2009/00035). A Building Control application (N/0008/8980) for 5 self-contained flats was rejected on the basis that the property was in use as a single family dwelling.

18. At that time the Council was informed that an LDC application was to be submitted for 5 self-contained flats. A site visit in February 2010 showed that the property was being occupied by a single family of 11 and was considered to be a single family dwellinghouse. In relation to the 2018 enforcement notice a site visit in July had revealed extensive works to the property including the installation of 5 doorbells. The Council was informed that the property was being used as a HMO for 5 persons and that this had been the previous use. The September 2018 visit had shown the kitchen area without cooking facilities.

19. The Council stresses that all of the submitted tenancy agreements refer to Flats, A, B, C, D and E and that there is nothing in the evidence to indicate that these tenancies had '*anything to do with an HMO as being applied for in the application*'. The Council also stresses that its own evidence is that the property was occupied by a single family placed by the London Borough of Camden. The Council has confirmed that this use was for a period between 2009 and June 2014.

My Assessment - Introduction

20. As indicated above, section 191 (2) of the Act indicates that uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any enforcement notice then in force. In this case enforcement action could not have been taken if the use benefitted from an extant grant of planning permission; benefitted from a general permitted development (PD) permission granted by the GPDO or if the time for taking enforcement action has expired. This latter point refers to the 'four year rule' where the change of use relates to a dwelling house.

21. In this case there is clearly no planning permission in place and this leaves the two questions of whether the use was PD at the time of the application or whether the time for taking enforcement action had expired on that date. The Council took the view that the 'four year rule' applied whereas the appellant argues that the use constituted PD following the conversion works carried out in 2011. As such the appellant contends that the Council has not correctly considered the LDC application.

22. Having considered the Council's and the Appellant's arguments about how the application should have been dealt with it is my view that both approaches need to be considered in order to establish whether or not the Class C4 HMO use was lawful at the time of the LDC application. It could have been the lawful use of the property because it was PD and had been established since 2011 and/or it could have been lawful because the Council was too late to take enforcement action. I have considered both of these approaches below, on the basis of all of the submissions.

The current layout of the property

23. During my site visit I inspected all 5 'Flats' or bedsits. Flat 1 on the ground floor comprised two rooms and a bathroom. It had its own boiler for heating and hot water; a partly fitted kitchen, albeit without cooking facilities and an intercom system linked to the front door. In the ground floor hallway there was a meter cupboard. It was indicated that the one meter currently covered the whole of the house. However there had clearly been other separate meters and there was a numbering system from 1 to 5. Towards the rear of the ground floor there was a smaller room which is labelled 'Bedsit 2' on the plan (RE84AR/1 dated 14/9/18) and a bathroom. The small room was empty and unoccupied. At the very rear of the ground floor there was a fully fitted kitchen with cooking facilities, a fridge and a washing machine.

24. Flat 3, or Bedsit 3, was accessed from a half landing, between ground and first floors, and occupied the rear of the house. It too had a part fitted kitchen without cooking facilities, a boiler and an access intercom system. Bedsit 4 at first floor level comprised two rooms with bathroom. It had a part fitted kitchen and the equipment included a microwave, a toaster, a boiler and a washing machine. Like the other Flats/bedsits it had its own intercom access system linked to the front door. Finally the top floor provided accommodation for Flat/Bedsit 5 comprising one large room; a partly fitted kitchen without cooking facilities and a small bathroom.

25. In terms of occupants, it would appear that Flat 1 is currently occupied by one or two persons; Flat 3 by one adult and two children; Flat 4 by one person and Flat 5 by 2 persons. At the time of my visit Flat/bedsit 2, as shown on the submitted plan was not occupied. Thus the house appears to be occupied at present by either 5 or 6 adults and two children. Thus there is another anomaly in relation to the property being stated to be in Class C4 HMO use. This is because the courts have held that children under 18 are classed as residents when calculating the total number of people living in a Class C4 HMO. There is no firm evidence before me about the exact number of people living in the property at the time of the LDC application. However,

clearly at the time of my site visit even if Flat 1 only housed one person, there was a total of 7 persons (five adults and two children) living at No 84. This would place it into the larger HMO category as opposed to it being a Class C4 HMO.

Whether it has been demonstrated on the balance of probabilities that the use is PD

23. To be PD the onus is on the appellant to precisely and unambiguously show that the COU from dwelling house Class C3 to Class C4 HMO occurred before the A4D came into force on 30 November 2013. It is stated that conversion works carried out in 2011 were in relation to the Class C4 HMO use. However, there is no specific evidence of what these works comprised and no receipts for works carried out. Whilst accepting that the works were carried out, it is far from clear that they related to a COU from Class C3 to Class C4 HMO. Indeed they could have related to works to create 5 separate dwelling units. The individual boilers, the former meter situation and the intercom access arrangements reinforce my view that this could have been the case.

24. There is also the contradictory evidence supplied by the Council which indicates that the property was being lived in by a family placed by Camden Council. It is stated that a couple and their eight dependant/non dependants lived there between 25 November 2009 and 22 June 2014. I find it difficult to reconcile this with the contention that the property had been in a Class C4 HMO use since 2011. On the balance of probability I do not consider that the appellant has shown that the property was in such a use at the time the A4D came into force.

25. After that date (30 November 2013) it would have been necessary to apply for planning permission to change the use from a single dwelling house to a HMO. There is no planning permission in place and any change of use after that date would have not been permitted under the GPDO. On this first point, therefore, I cannot accept that the appellant has demonstrated that the property was in use as a Class A4 HMO property in 2011, or for that matter between 2011 and November 2014. The use could not, therefore, have constituted permitted development under the GPDO. The facts that there are currently 7 occupants, as well as the potential for one more person in bedsit 2, reinforces my conclusion that the appellant has not demonstrated that the use of the property as a Class C4 HMO could have been permitted development in 2011 or 2014.

Whether it has been demonstrated on the balance of probabilities that the time for taking enforcement action had expired

25. On this second point the onus is upon the appellant to precisely and unambiguously show that the Class C4 HMO use was continuous for a 4 year period commencing on 31 August 2014, the date of the LDC application. That means that it must also be shown that on 31 August 2018 (date of LDC application) there were no more than 6 unrelated persons living in and sharing the property.

26. From the Council's evidence it is clear that the house was occupied by the family placed by the London Borough of Camden until at least 22 June 2014. The Council contends that this was for part of the relevant period. If it was until that date it was not part of the relevant 4 year period. However, evidence from an interested person indicates that the family stayed in occupation until 2017. This casts further doubt on the appellant's contention that the house had been in Class C4 HMO use for the relevant four-year period.

27. The question now, therefore, is whether or not there is sufficient evidence submitted by the appellant to conclusively show that the property was continuously occupied as a Class C4 HMO (for up to 6 unrelated persons) between 31 August 2014 and the date of the LDC application, 31 August 2018.

28. The submitted tenancy information refers to Flats A, B, C, D and E. The only submitted layout drawing (RE/84AR/1) is dated 14.09.2018 and refers not to 'Flats' but to 'bedsits'. There is no drawing or detailed information relating to the 2011 conversions, or to show Flats A, B, C, D and E. I acknowledge that the tenancy agreements indicate who might have been living in the property during those particular times, but there is no conclusive evidence to show how the property was essentially being used as a shared single dwellinghouse in Class C4 for the whole of the relevant 4 year period, or for that matter how many persons (including children) occupied the dwellinghouse. Whilst acknowledging that the house was registered as a single dwelling for Council Tax purposes there is no evidence relating to how basic utility bills were paid for the property as a single dwelling.

29. Having seen the property as currently laid out and occupied, I acknowledge that all but one of the Flats/bedsits do not have separate cooking facilities. However, they all have separate boilers, fridges as well as separate entry intercoms. Flat 4 had its own cooking facilities in the form of a microwave oven and a toaster, as well as its own washing machine. These individual facilities seem somewhat unusual for a house which, in effect, is being shared by up to 6 unrelated individuals. The only communal space was the kitchen on the ground floor and there was no communal lounge or sitting room. The occupants seemed to use their Flats or bedsits as separate units rather than as simple bedrooms in a shared dwelling house.

30. Instead of a Class 4 use whereby occupants share communal spaces, my inspection leads me to the conclusion that the house is in some form of hybrid use which, as a matter of fact and degree, cannot be directly compared to a Class C4 HMO use. In any case, even if such a hybrid use as this could be categorised as a Class C4 HMO, I do not consider that the appellant has precisely and unambiguously shown that a Class C4 HMO use was continuous for a 4 year period commencing on 31 August 2014. The current number of occupants, as well as the overall layout, also throws doubt upon the contention that the house has been occupied continuously as a Class C4 HMO dwelling for the relevant four-year period. It follows, in my view, that the Council was not precluded from taking enforcement action.

Conclusion

31. On the basis of all of the submissions and on balance of probabilities I am not convinced that No 84 Alexandra Road has been in continuous use as a Class 4 HMO for the relevant 4 year period from 31 August 2014 until 31 August 2018. Nor do I consider that the appellant has shown that the use constituted permitted development. It follows that I find the Council's decision to refuse the LDC application was sound and that the appeal, therefore, fails.

Other matters

32. In reaching my conclusions in this appeal I have taken into account all of the other matters raised by the Council, by the appellant and by an interested person. These include the full planning history of the property; the initial appeal documents; all subsequent statements; the tenancy agreements and the submitted drawings. However, none of these carries sufficient weight to alter my conclusions that a LDC should not be issued in this instance. Nor is any other factor of such significance so as to change my decision

Formal Decision

33. The appeal is dismissed and a lawful development certificate will not be issued.

Anthony J Wharton

Inspector